NOS. 79-652 and 79-653

* * *

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

REIDY INTERNATIONAL, INC., AND NATIONAL BANCSHARES CORPORATION OF TEXAS, ET AL.,
Petitioners,

V.

BOB BULLOCK, COMPTROLLER OF PUBLIC ACCOUNTS OF THE STATE OF TEXAS, ET AL.,
Respondents.

* * *

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

* * *

RESPONDENTS' BRIEF IN OPPOSITION

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TO THE SUPREME COURT OF TEXAS

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents, Bob Bullock, Comptroller of Public Accounts, Warren G. Harding, successor in office to Jesse James as Treasurer of Texas and Mark White, successor in office to John L. Hill, Jr., as Attorney General of Texas, respectfully submit the following brief in opposition to the issuance of writs of certiorari as prayed for by Petitioners.

QUESTION PRESENTED

Whether the Supreme Court of Texas correctly interpreted Public Law 91-156 (12 U.S.C. §548), in view of the Tenth Amendment of the United States Constitution, so as to treat national banks principally

located in Texas as Texas payors under the "location of payor" rule of the Texas Franchise Tax Act.

STATUTES INVOLVED

12 U.S.C. §42 provides: "The provisions of all Acts of Congress relating to national banks shall apply in the several states, the District of Columbia, the several Territories and possessions of the United States, and the Commonwealth of Puerto Rico."

Petitioners adequately set forth the provisions of other statutes involved herein in Appendix E to Reidy International, Inc.'s petition and Appendix K to Bank Holding Companies' petition.

Article 12.19(3), Tax.-Gen., Title 122A, V.T.C.S. (Reproduced as Appendix A).

Articles 14.015(4)(5), 14.11(A), 14.11(C)(1)(2), and 14.12, Tax.-Gen., Title 122A, V.T.C.S. (Reproduced as Appendix B).

STATEMENT OF THE CASE

Petitioners, bank holding companies and an oil and gas corporation (Reidy International, Inc.) sued Respondents for refund of franchise taxes for the years 1974 and 1975 which were imposed under the Texas Franchise Tax Act, Articles 12.01, et seq., Tax.-Gen., Title 122A, V.T.C.S., and calculated as described in Petitioner Reidy's Petition for Writ of Certiorari (page 3, fn. 1). To determine whether the dividends or interest paid by national banks to Petitioners constituted Petitioners' "gross receipts from business done in Texas" under the allocation formula of Art. 12.02(1)(a), the "location of payor" rule as described in *Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967), was used.

Prior to January 1, 1973, dividends and interest paid

by national banks to corporations were treated as gross receipts from the "entire business" of a corporation under Art. 12.02(1)(a), i.e. they appeared in the denominator of the allocation formula of Art. 12.02(1)(a) because such banks were considered foreign corporations or non-Texas payors since they were chartered under the National Bank Act, 12 U.S.C. §21.

Congress enacted 12 U.S.C. §548 (hereinafter referred to as Public Law 91-156) which became effective January 1, 1973. Respondent Comptroller of Public Accounts applied this Congressional enactment to the Texas Franchise Tax statutes. Public Law 91-156 provides:

> For the purpose of any tax law enacted under authority of the United States or any State, a national bank shall be treated as a bank organized and existing under the laws of the State or other jurisdiction within which its principal office is located.

Using P. L. 91-156, Texas statutes and franchise tax case law as authorities, Respondent Comptroller of Public Accounts promulgated Ruling 80-0.18 (reproduced as Pet. Bank Holding Companies' App. L). This ruling treats national banks as Texas payors under the State's "location of payor" rule, and "...Accordingly, dividends and interest paid on and after January 1, 1973 by a national bank whose principal office is located within Texas are includable in gross receipts from business done in Texas pursuant to Article 12.02(1)(b)." (Pet. Bank Holding Companies' App. L). As a result, Petitioners' franchise taxes increased in amount for the years at issue.

After Congress adopted Public Law 91-156, the Texas Legislature responded by passing the 1971 omnibus tax bill, Texas Laws 1971, ch. 292, at 1194-1207, hereinafter more specifically referred to as Article 7 of House Bill 730. Article 7 provides:

> The passage of Public Law 91-156 by the Congress of the United States shall not operate to impose or permit the imposition of any additional tax or taxes upon the institutions affected thereby unless:
>
> (a) The tax or taxes were being imposed prior to January 1, 1971, or
>
> (b) Such institutions are specifically designated as being subject to such additional tax or taxes other than the limited sales and use tax by an Act of the Legislature passed subsequent to the effective date of Public Law 91-156.

Interpreting the provisions of Art. 7 of H.B. 730, the District Court concluded as a matter of law that Petitioners "were not institutions affected by the passage by Public Law 91-156 *within the meaning of art. 7 of House Bill 730.*" (Emphasis added). (Pet. Reidy's App. A, A-2). The Court of Civil Appeals reversed the District Court. It based its decision upon the following reasons: (a) The Texas Legislature in 1971 prohibited precisely the type of change the Comptroller made acting under authority claimed to be derived from 12 U.S.C. Sec. 548 (Pet. Reidy's App. B, B-13); (b) Petitioners were institutions affected by Public Law 91-156 (Pet. Reidy's App. B, B-14, B-15); and (c) the increase in franchise taxes was "the imposition of any additional tax or taxes within the meaning of Article 7." (Pet. Reidy's App. B, B-15).

The Texas Supreme Court reversed the Court of Civil Appeals and viewed Petitioners' claims as essentially a matter of State law, stating:

> The central issue presented is whether the comptroller correctly ruled that interest and dividends derived from national banks located

> in this state are includable in the corporate payee's Texas gross receipts for the purpose of assessing a franchise tax. The taxpayers contend, and the court of civil appeals has held, that an act of the Texas Legislature, 1971 Tex. Gen. Laws, ch. 292, art. 7 §1, at 1206, codified as a footnote in TEX.TAX.GEN.ANN. art. 20.02 (Vernon Supp. 1978-1979) (hereinafter article 7, section 1), precludes such inclusion. We cannot agree. It is our opinion that the legislature merely intended to preclude the additional taxation of banks and did not intend to preclude a franchise tax upon other, unmentioned corporate entities.

(Pet. Reidy's App. C, C-2). The Texas Supreme Court noted that Petitioners were claiming an exemption under Art. 7 from the taxes at issue and construed such statute strictly against Petitioners. (Pet. Reidy's App. C, C-6). The Texas Supreme Court then noted that, "the only institutions affected by Pub. L. 91-156 are 'banks,'" and that none of Petitioners are banks. (Pet. Reidy's App. C, C-9, C-10). The Texas Supreme Court observed also that, "By passage of article 7, section 1, our legislature sought to address the congressional effort to remove federal barriers to equal tax treatment of state and national banks... Stated differently, there is no reason for us to presume that the legislature sought to exempt national bank holding companies and corporate holders of national bank certificates of deposit from a franchise tax computed on income received from national banks located in this state." (Pet. Reidy's App. C, C-10). The Texas Supreme Court thus concluded:

> We therefore hold that the comptroller correctly ruled that, *under the location of payor rule*, interest and dividends derived from national banks located in this state are includable in the corporate payee's Texas gross receipts for the purpose of assessing a franchise

> tax. To hold otherwise would mean that the Texas legislature intended to continue the unequal treatment between recipients of income from state banks and recipients of income from national banks. This we cannot accept. *Rather, we believe that the legislature merely intended to preserve the status quo in reference to taxation of banks, both national and state, until it chose to impose additional taxation at a later time.* (Emphasis added).

(Pet. Reidy's App. C, C-11).

As is evident from the conclusion of the District Court and the opinions of the Court of Civil Appeals and Texas Supreme Court, none of the courts below passed upon any issue regarding the Tenth Amendment of the United States Constitution. The Texas Supreme Court did not hold that P. L. 91-156 imposed the franchise taxes at issue upon Petitioners.

REASONS FOR DENYING THE WRITS

Respondents will address the question presented by showing that:

> 1. Petitioners' federal rights, statutory or constitutional, were not denied.
>
> 2. The decision of the Texas Supreme Court was entirely based upon an independent ground of state law, i.e. Article 7 of House Bill 730.
>
> 3. Petitioners did not adequately preserve their federal questions to invoke the jurisdiction of this Court.

1. Petitioners have argued that the Texas Supreme Court's application of Public Law 91-156 is an unconstitutional encroachment under the Tenth

Amendment of the United States Constitution upon the State's power to impose its own taxes. Respondents submit that there has been no such interference by federal law with the franchise tax statutes at issue, that the taxes imposed upon Petitioners are based upon state and not federal statutes, and that the Texas Supreme Court simply followed the mandate of P. L. 91-156 and federal statutory and case law in properly construing P. L. 91-156.

In treating national banks principally located in Texas as Texas payors for purposes of the dividends and interest such banks paid to Petitioners, Respondents and the Texas Supreme Court merely applied the language of Public Law 91-156 that, "For the purpose of any tax law enacted under authority of...any State," (the Texas Franchise Tax Act being such a law) "a national bank shall be treated as a bank organized and existing under the laws of the State...within which its principal office is located." National banks were thus treated as Texas payors under the Texas "location of payor" rule because that is how Texas state banks (which are organized and exist under the laws of Texas) are treated under such rule.

In *First Nat. Bank v. Buder*, 8 F.2d 883 (E.D. Missouri 1925), reversed on other grounds at 16 F.2d 990 (8th Cir. 1927), cert. den. 274 U.S. 743, the district court addressed a similar contention of unconstitutional interference by §5219 as Petitioners make herein and responded:

> An able and most plausible argument is made upon the contention that section 5219, supra, is unconstitutional, for that Congress has no power to delimit, or meddle with, the several sovereign states touching their inherent power to levy and collect taxes for their own several uses. But I cannot read the cases of McCulloch v. Maryland, 4 Wheat. 316,

> 4 L. Ed. 579, Osborn v. Bank of U.S., 9 Wheat. 738, 6 L. Ed. 204, and Weston v. Charleston, 2 Pet. 449, 7 L. Ed. 481, in any other light than that no power exists in the states to tax national banks at all, except and until Congress shall so permit, and that such permission, when granted, may be hedged about with conditions, which conditions must be met by the states before they may tax these banks. Bank of Gulfport v. Adams, 258 U.S. 362, 42 S. Ct. 323, 66 L. Ed. 661; Des Moines Bank v. Fairweather, 263 U.S. 103, 44 S. Ct. 23, 68 L. Ed. 191; Bank of California v. Richardson, 248 U.S. 476, 39 S. Ct. 165, 63 L. Ed. 372.

8 F.2d at 883. While the Eighth Circuit reversed the district court's decision on other grounds, it agreed with the lower court's analysis of §5219's constitutionality by reiterating the settled law:

> The defendants give various reasons for upholding the assessment in question.
>
> They urge the unconstitutionality of section 5219 and the amendment of 1923. We think it is now too late to attempt to overturn the well-settled doctrine that national banks are instrumentalities of the United States, subject to its paramount authority, and taxable by the states only to the extent and in the manner expressly permitted by Congress.

16 F.2d at 992.

While the foregoing cases did not involve Public Law 91-156 as it is presently worded, *First National Bank and Trust Company of Oklahoma City v. Parham*, 515 P.2d 1374 (Okla. 1973) considered the same P. L. 91-156 at issue herein and construed such statute as did the Texas Supreme Court. The Oklahoma Supreme Court held:

> The language of the newly amended federal statute is *mandatory* in nature in that it expressly requires that for the purpose of tax laws enacted by the various states '...a national bank shall be treated as a bank organized and existing under the laws of the State or other jurisdiction within which its principal office is located.'
>
> ****
>
> Thus, it was recognized that the amendment would have the effect of destroying the in lieu tax whereby the states chose the method of taxing national banks. *Under the amendment, national banks are treated the same as state banks for tax purposes.* Because the language of the amendment is mandatory, *the states have no other option, but to treat national banks the same as state banks for tax purposes...*

Id. at 1376. (Emphasis added).

The interpretation of a state's tax statutes by a state court in conformity with congressional legislation relating to national banks is not a novel proposition. In *First Nat. Bank of St. Joseph v. Township of St. Joseph*, 46 Mich. 526, 9 N.W. 838 (1881), the Michigan Supreme Court, in analyzing §5219, wrote: "The power to tax at all comes from the act of congress, and it must be obeyed in thorough good faith. Our statute was passed for the express purpose of conforming to the law as existing in 1869, and as substantially reenacted by the Revised Statutes of 1872. In our judgment the state law and the act of congress must be read together, *and the state officers must act in harmony with the latter.*" *Id.* at 839. (Emphasis added).

In analyzing §5219 of the Revised Statutes, the predecessor to P. L. 91-156 (12 U.S.C. §548), this Court

stated in *Bank of California v. Richardson*, 248 U.S. 476, 483 (1919):

> There is also no doubt from the section that it was intended to *comprehensively control the subject* with which it dealt and thus to furnish the exclusive rule governing state taxation as to the federal agencies created as provided in the section. *All possibility of dispute to the contrary is foreclosed by the decisions of this court. People v. Weaver*, 100 U.S. 539, *Mercantile Bank v. New York*, 121 U.S. 138, 154; *Owensboro National Bank v. Owensboro*, 173 U.S. 664; *Covington v. First National Bank*, 198 U.S. 100. (Emphasis added).

The exclusive control which §5219 exercised over a state's treatment of national banks for tax purposes was explained in *Owensboro National Bank v. Owensboro*, *supra*, as follows:

> This section, then, of the Revised Statutes is the measure of the power of a State to tax national banks, their property or their franchises. By its unambiguous provisions the power is confined to a taxation of the shares of stock in the names of the shareholders and to an assessment of the real estate of the bank. *Any state tax therefore which is in excess of and not in conformity to these requirements is void.*

173 U.S. at 669. (Emphasis added).

Recently, in *First Agricultural National Bank of Berkshire County v. State Tax Commission*, 392 U.S. 339 (1968), *Owensboro* and *Richardson* were followed as the Court observed:

> A long line of subsequent decisions by this Court has firmly established the proposition that the States are without power, unless

> authorized by Congress, to tax federally created, or, as they are presently called, national banks.

Id. at 340. The Court continued its unwavering interpretation of 12 U.S.C. §548 by noting: "It seems clear to us from the legislative history that 12 U.S.C. §548 was intended to prescribe the only ways in which the States can tax national banks. And this is certainly not a novel interpretation of the section, as shown by previous decisions of this Court." *Id.* at 343.

Thus, from the foregoing authorities it can be readily and easily deduced that state tax statutes must accede to mandatory congressional enactments concerning the treatment of national banks for state tax purposes (such as P. L. 91-156), and not vice-versa as Petitioners argue. This concept is certainly in line with the clear language of P. L. 91-156 and 12 U.S.C. §42 which provides: "The provisions of all Acts of Congress relating to national banks shall apply in the several states, the District of Columbia, the several Territories and possessions of the United States, and the Commonwealth of Puerto Rico." Indeed, when Respondent Comptroller of Public Accounts decided to treat national banks principally located in Texas as Texas state banks, and thus as Texas payors under the State's "location of payor" rule and the franchise tax law, such action was in complete harmony with P. L. 91-156 and 12 U.S.C. §42.

The courts of Texas have consistently followed the letter and spirit of 12 U.S.C. §42 as seen by *Grayson County State Bank v. Calvert*, 357 S.W.2d 160, 162 (Tex. Civ. App. -- Austin 1962, writ ref'd n.r.e.) ("the several states lack power to tax National bank shares except as expressly permitted by Congress") and *Security National Bank of Lubbock v. Washington Loan and Finance Corporation*, 570 S.W.2d 40, 42 (Tex. Civ. App. -- Dallas 1978, writ dism'd) ("12 U.S.C.A. §94...is a

mandatory venue statute which requires suits against national banks to be filed in the county or district of their residence...").

Moreover, in direct contravention of Petitioners' encroachment theory under the Tenth Amendment, the Legislature of the State of Texas has incorporated federal law within its taxation statutes in areas other than the "location of payor" rule. The incorporation of this federal law is not used by Texas as a substitute for its own tax laws, but is used as a *measure* of taxes the State itself imposes. See Article 12.19(3) of the Franchise Tax Act, Tax.-Gen., Title 122A, V.T.C.S. (Appendix A). See also Articles 14.015(4)(5), 14.11(A), 14.11(C)(1)(2), and 14.12 of the Texas Inheritance Tax Act, Tax.-Gen., Title 122A, V.T.C.S. (Appendix B).

Contrary to Petitioners' Bank Holding Companies' argument under *Union Bank & Trust Co. v. Phelps*, 288 U.S. 181 (1933) and *Davenport Bank v. Davenport Board of Equalization*, 123 U.S. 83 (1887), Public Law 91-156 has not abridged "the taxing power of" Texas "in respect of other property" nor has it controlled "State action in respect of other matters." 288 U.S. 187, 188. No state tax statute has been thwarted, limited, diluted or abridged in any manner in this case. To the contrary, the Texas "location of payor" rule has continued to function within the State's franchise tax laws and has placed national banks within its confines as Texas payors in accordance not only with the terms of P. L. 91-156, but also within the boundaries of the rule itself. *The Chase Manhattan Bank, N.A. v. The Finance Administration of the City of New York*, ___U.S.___, 59 L. Ed.2d 445, 99 S.Ct. 1201 (1979), cited by all Petitioners, actually favors Respondents' position herein. In *Chase Manhattan* this Court held the attempted assissment by New York City of its rent and occupancy tax as unauthorized under Public Law 91-156's "temporary provisions", a holding which is consistent with Respondents' arguments that the

treatment of national banks for purposes of state taxation is controlled by paramount federal law.

Consequently, in view of the foregoing federal and state law cited and analyzed by Respondents, the Texas Supreme Court was correct in following the edict of P. L. 91-156 in treating national banks principally located in Texas as Texas state banks (and therefore as Texas payors) for purposes of the franchise tax paid by Petitioners and other corporations doing business in Texas. No federal statute imposed the Texas franchise taxes at issue upon Petitioners. All taxes at issue are subject to the Texas Franchise Tax Act. (See Petitioners', the State's, Application for Writ of Error in the Supreme Court of Texas, pp. 33-34).

2. Having correctly followed the mandatory language of P. L. 91-156 and having also correctly applied such statute to the State's "location of payor" rule, the Texas Supreme Court based its decision upon independent grounds of state law that Article 7 of House Bill 730 did not exempt Petitioners from the taxes at issue. (Pet. Reidy's App. C, C-2). The Texas Supreme Court specifically addressed the issue of whether Petitioners are "institutions affected" by P. L. 91-156 under the language of Art. 7 of H. B. 730. (Pet. Reidy's App. C, C-5). The court then noted that Petitioners' claims amounted to a claim for exemption under Art. 7 (Pet. Reidy's App. C, C-6). The court specifically concluded that, "...there is no reason for us to presume that the Legislature sought to exempt national bank holding companies and corporate holders of national bank certificates of deposit from a franchise tax computed on income received from national banks located in this state." (Pet. Reidy's App. C, C-10).

The foregoing analysis and a simple examination of the Texas Supreme Court's opinion shows that it turned

entirely upon independent matters of state law, the interpretation of Article 7 of House Bill 730. As stated in *Bank of California v. Richardson*, 248 U.S. 476, 481: "The decision below, in so far as it rested upon the state law, is binding and we put that subject out of view." As stated in *Gurley v. Rhoden*, 421 U.S. 200, 208 (1975):

> [A] State's highest court is the final judicial arbiter of the meaning of state statutes ..., and therefore our review of the holding of a state court respecting the legal incidence of a state excise tax is guided by the following: 'When a state court has made its own definitive determination as to the operating incidence, our task is simplified. We give this finding great weight in determining the natural effect of a statute, and if it is consistent with the statute's reasonable interpretation, it will be deemed conclusive.'

Thus, the correctness of the Texas Supreme Court's ruling under Art. 7, H.B. 730, does not warrant review by this Court, since such ruling is the interpretation by the highest court of the state of that state's statutes. *McLeod v. Dilworth Co.*, 322 U.S. 327, 328-330 (1944); *Maiorano v. Baltimore & Ohio R.R. Co.*, 213 U.S. 268, 272; *Boston Chamber of Commerce v. Boston*, 217 U.S. 189, 194 (1910); *Alabama v. King & Boozer*, 314 U.S. 1, 9-10 (1941).

Because the Texas Supreme Court construed "institutions affected thereby" as meaning only banks in Art. 7, H. B. 730, its decision rested on an independent and adequate non-federal ground, and this Court lacks jurisdiction to review that decision. *Viator v. Stone*, 336 U.S. 948 (1948). Only the State Supreme Court can speak with final authority on who bears the tax burden under a state statute. *Boston Chamber of Commerce v. Boston, supra.* In the case at bar the Texas Supreme Court spoke with final authority on who benefits from

the exemption of Art. 7 of H.B. 730, and the court specifically excluded Petitioners from such exemption.

3. Petitioners have not adequately preserved the federal question involving the issue of constitutionality under the Tenth Amendment of the United States Constitution so as to properly invoke this Court's jurisdiction. To raise a federal constitutional issue under 28 U.S.C. §1257, it must have been raised, preserved and passed upon in the state courts below. *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969); *Tacon v. Arizona*, 410 U.S. 351 (1975). Petitioners, Bank Holding Companies, did not plead a violation of the Tenth Amendment by P. L. 91-156, but clearly plead the exemption of Art. 7, H.B. 730. (R. 14-22). Petitioner Reidy also failed to plead the Tenth Amendment and also clearly plead the exemption of Art. 7. Interestingly, Petitioner Reidy plead a violation of the Fourteenth Amendment of the United States Constitution (R. 115-123), but it did not raise a federal question under the Fourteenth Amendment before the Court of Civil Appeals or the Texas Supreme Court. (See Brief of Appellant Reidy in the Court of Civil Appeals and Reidy's Answer to Application for Writ of Error and Motion for Rehearing in the Texas Supreme Court).

Also, the Tenth Amendment was not raised in Petitioners' Motions for New Trial. (R. 183-185, R. 188-190). Petitioners continued to fail to raise the Tenth Amendment as an issue in the Court of Civil Appeals. (See Brief of Appellant Reidy and Appellants-Bank Holding Companies' Brief in the Court of Civil Appeals). Without the Tenth Amendment before the Court of Civil Appeals, it is not surprising that such court did not pass upon Petitioners' Tenth Amendment arguments. (Pet. Reidy's App. B). Petitioners did not *raise* arguments under the Tenth Amendment until their Motions for Rehearing in the Texas Supreme Court so the Texas Supreme Court did not *pass* upon Petitioners' arguments under the Tenth Amendment as seen by such

court's opinion. (Pet. Reidy's App. C).

As this Court explained in *Cardinale v. Louisiana*, *supra*, "In *Cromell v. Randell*, 10 Pet. 368 (1836), Justice Story reviewed the earlier cases commencing with *Owings v. Norwood's Lessee*, 5 Cranch 344 (1809), and came to the conclusion that the Judiciary Act of 1789, ...vested this Court with no jurisdiction unless a federal question was raised and decided in the state court below. 'If both of these do not appear on the record, the appellate jurisdiction fails.'" 394 U.S. at 438. In *C.I.O. v. McAdory*, 325 U.S. 472, 477 (1945), this Court observed: "Further, the contention that §16 conflicts with the National Labor Relations Act...was *not passed on by the Circuit Court*, was not raised by assignment of error in Alabama Supreme Court, and *that court did not pass on that question either in its opinion* in this case or in its opinion in the Alabama State Federation of Labor case which it adopted as controlling." (Emphasis added). To reiterate neither the District Court in its Conclusion of Law (the Texas equivalent to the Alabama Circuit Court in *C.I.O.*) nor the Court of Civil Appeals or the Texas Supreme Court in their opinions passed upon Petitioners' Tenth Amendment arguments.

Petitioners for the first time raised arguments under the Tenth Amendment as assignments of error in their Motions for Rehearing before the Texas Supreme Court. As explained earlier no such assignments were made from the District Court's judgment which was adverse to Petitioners. As stated in *Radio Station WOW v. Johnson*, 326 U.S. 120, 128 (1945): "Questions first presented to the highest State court on a petition for rehearing come too late for consideration here..." As this Court admonished in *C.I.O. v. McAdory*, *supra*, "Since the State Supreme Court did not pass on the question now urged, and since it does not appear to have been properly presented to that court for decision, we are without jurisdiction to consider it in the first instance

here." 325 U.S. at 477. Because Petitioners failed to preserve their assignment of error based upon a violation of the Tenth Amendment throughout the proceedings in the state courts below, this Court is therefore without jurisdiction to consider Petitioners' petitions for a writ of certiorari.

CONCLUSION

The petitions for a writ of certiorari should be dismissed for want of jurisdiction, or in the alternative such petitions should be denied.

Respectfully submitted,

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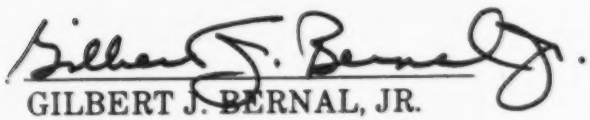

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NOS. 79-652 and 79-653

* * *

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

REIDY INTERNATIONAL, INC.,
AND NATIONAL BANCSHARES
CORPORATION OF TEXAS, ET AL.,
Petitioners,

V.

BOB BULLOCK, COMPTROLLER
OF PUBLIC ACCOUNTS OF THE
STATE OF TEXAS, ET AL.,
Respondents.

* * *

PROOF OF SERVICE

I hereby certify that on this 28 day of November, 1979, three copies of Respondents' Brief In Opposition were mailed, postage prepaid, to Willis Witt, 500 Gulf Building, Houston, Texas 77002, C.W. Wellen, Bank of the Southwest Building, Houston, Texas 77002, Keith A. Jones, 1150 Connecticut Avenue, N.W., Washington, D.C. 20036, and Harry M. Reasoner, 1800 First City National Bank Building, Houston, Texas 77002, counsel for Petitioners. I further certify that all parties required to be served have been served.

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APPENDIX A

Art. 12.19. Optional Use of Short Form Return.

(3) The Comptroller of Public Accounts shall prescribe the form of reports to be made by any corporation electing to pay its franchise tax under the provisions of this Article. The Comptroller of Public Accounts may require such reports to contain any or all information required under Article 12.08, 12.09, 12.11 or 12.12 of this Chapter.

There shall be submitted with the report a signed copy of the corporation's Federal income tax return for the period described in Subsection (2) of this Article. All franchise tax reports and income tax returns furnished to the Comptroller of Public Accounts under the provisions of this Article shall be confidential in nature and treated as such by the Comptroller of Public Accounts under the same conditions as provided in Article 12.10. The Comptroller of Public Accounts or the State Auditor may in the execution of this Article cause the books of any corporation electing to pay franchise taxes under this Article to be examined, whether such books can be located within this State or any other state within the United States. The Comptroller of Public Accounts may make any rules or regulations necessary for the administration of this Article.

APPENDIX B

Art. 14.015. Exempt Transfers.

The inheritance tax imposed by Article 14.01 shall not apply to the following transfers of property:

(4) The value of an annuity or other payment received by any beneficiary (other than a personal representative of the decedent) which qualifies for exemption from the Federal Estate Tax under Subsections (c), (d), or (e) of Section 2039 of the Internal Revenue Code of 1954, as now or hereafter amended, said Subsections (c), (d), and (e) being codified as 26 United States Code Annotated Sections 2039(c), (d), (e).

(5) Members of the Armed Forces Dying in a Combat Zone. Any military pay or other military allowances paid to the beneficiaries of a Texas resident who, while in active service of the armed forces of the United States, was killed in action in a combat zone or was legally declared dead following being classified by the armed forces as missing in action. For purposes of this Subsection, "combat zone" means any area which the President of the United States by executive order designates as an area in which the armed forces are or have engaged in combat.

Art. 14.11 Value of Property Transferred.

(A) The inheritance tax imposed by Article 14.01 shall be imposed upon the actual market value of taxable property transferred, if it has a market value, and in case it has none, then its real value. Any bonds of the United States, saving notes or other obligations which, upon the death of the decedent, constitute a part of his estate, and which may be and are received, by the United States at par and accrued interest, in payment of any estate or inheritance taxes or any other tax liability imposed by the United States shall for Texas inheritance tax purposes be valued in such estate at the amount for which same are used in payment of any such Federal tax liability.

(C) Determining Value. (1) If the Comptroller shall deem the value of any property reported by the personal representative to be incorrect, he may appraise the property or have it appraised to determine the correct value.

(2) The Comptroller may take into consideration the Federal valuation of any property for Federal estate tax purposes and may value or revalue any or all property in an estate for a determination of the tax levied by this Chapter.

Art. 14.12. Additional Inheritance and Transfer Tax.

(A) Impose Additional Tax. In addition to the inheritance tax already levied by this State under existing laws, an inheritance and transfer tax is hereby levied upon the net estate of every decedent dying after this Act shall take effect, and whose estate, or any portion thereof, is, or hereafter shall be, made taxable under the inheritance tax laws of this State, or that may be subject to such taxes under any law of this State that may be hereinafter enacted. Said tax shall be, and is, levied upon the entire net value of the taxable estate of the decedent situated and taxable in the State of Texas, and the tax on each such estate be equal to the difference between the sum of such taxes due this State as inheritance or transfer taxes and eighty percent (80%) of the total sum of the estate and transfer taxes imposed on such estate by the United States Government under the Revenue Act of 1926, by reason of the property of such estate which is situated in this State and taxable under the laws of this State.

(B) When No Tax Due. In the event the amount of inheritance and transfer taxes assessed against any certain estate under the inheritance tax laws of this State shall equal or exceed eighty per cent (80%) of the estate or transfer taxes assessed and computed by the United States under the Revenue Act of 1926, against

said estate or property belonging thereto and situated within the State of Texas, then no additional taxes shall be collected hereunder, it being the purpose and intention of this Article to collect only a sufficient additional tax when necessary, for the State to get full benefit of the eighty per cent (80%) credit to the States provided for by Section 301, Chapter 27, of the Federal Revenue Act of 1926.

(C) Tax on Estate Subject to Federal Tax But on Which No State Tax is Due. Where no inheritance tax is imposed on an estate, which is situated in this State, under the laws of this State, by reason of its value not exceeding in value the amount of exemptions, and an estate tax is imposed on such estate by the Federal Government, then there shall be, and is hereby levied and shall be collected from such estate, an inheritance or transfer tax sufficient in amount to equal eighty per cent (80%) of said tax imposed by the Federal Government under the Revenue Act of 1926, on that portion of said estate which is situated in the State of Texas.

In computing and determining the rate of the tax in such cases named in this Section, the State Comptroller shall compute the same upon the net valuations of said estate as determined and used by the United States in computing the amount of the Federal Government tax due upon said estate, and said tax shall be paid from the whole of such estate before partition and distribution among the joint or several owners of same.

(D) Computation of Tax. In determining what is eighty per cent (80%) of the United States estate tax mentioned in the preceding Sections, the same shall be computed as eighty per cent (80%) of such taxes actually assessed and determined by the Federal Government under the Revenue Act of 1926, against every estate situated wholly in this State, or in case an estate is

situated partly in this State and partly outside of this State, then such eighty per cent (80%) shall be computed as eighty per cent (80%) of the total amount of the Federal taxes finally determined and assessed by the Federal Government under the Revenue Act of 1926, on and against that part of the estate situated in the State of Texas, and said amount of Federal tax shall be determined by multiplying the total Federal estate tax on the entire estate by a percentage which shall be the same percentage as the percentage of the net estate located in Texas is to the total net estate of the decedent, wherever located, before deducting specific exemptions.

(E) Act Not to Increase Combined Tax Due to State and Federal Government. This Article shall always be construed so as not to increase the total amount of taxes payable to the State and the Federal Government combined upon the estates of decedents, the only purpose of said additional tax being to take full advantage of the eighty per cent (80%) credit allowed by the Federal Revenue Act of 1926, to those who have paid any estate, inheritance, legacy, or succession tax to any state or territory, or the District of Columbia, in respect to any property included in the decedent's gross estate.